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10/788,469

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EXAMINER

TRAN, HANH VAN

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/788,469

Applicant(s)

ZAKARIA ET AL.

Examiner

Hanh V. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-110 is/are pending in the application.
- 4a) Of the above claim(s) 11,35-39,60-73,103 and 106 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10,12-34,40-59,74-102,104,105 and 107-110 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/1/04 & 5/19/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is the First Office Action on the Merits from the examiner in charge of this application in response to applicant's reply filed on 8/22/2006, in which applicant elected Species II of lifting means comprising drawing figures 18-28, and Species I of display means comprising drawing figures 1-11 and 14-16. Please note that claim 3 was cancelled in the amendment filed on 5/19/2006.

Election/Restrictions

2. Claims 11, 35-39, 60-73, 103, and 106 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/22/2006.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the limitation in claim 52 of the control means being operable to engage the locking means to maintain the inlet door in the closed position while the lifting means moves the pallet support means.

4. The abstract of the disclosure is objected to because it includes legal phraseology such as "present invention". Correction is required. See MPEP § 608.01(b).

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

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The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Drawings

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitation in (1) claim 25 of "the exterior panel portion is hingedly connected to the frame member", (2) claim 29 of "the closure member is a hook-and-eye closure member", (3) claim 45 of the housing is "hexagonal", (4) claim 46 of the housing is "octagonal", (5) claim 85 of the base having "feet mounted to the underside thereof for supporting the housing at a selected height above the floor", (6) claim 86 of the feet are "self-leveling" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

7. In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Sheets" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d)(1). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

Claim Objections

8. Claims 4, 7-8 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. For example, claim 1 recited the "display means...for placing a promotional message on at least one outwardly directed housing face", while claim 4, and 7-8 recited the same thing.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claim 52 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 52, it is not clear how the control means being operable to engage the locking means to maintain the inlet door in the closed position while the lifting means moves the pallet support means.

11. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

12. Claims 88-90 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

13. In claims 88-90, claims 88-90 provides for the use of the retail merchandising apparatus, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 88-90 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under

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35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

16. Claims 1-2, 4-10, 12-34, 40-54, 74-78, 83-94, 102, 107-110 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE3705322 to Mehlinger in view of USP 5,310,063 to Skolasinski and USP 6,079,560 to Champion.

Mehlinger discloses a retail merchandising apparatus comprising all the elements recited in the above listed claims including, such as shown in Fig 1-2, a pallet support means comprising a planar shelf, lifting means connected to the pallet support means for moving the support means between a lowered position and a raised position relative to a floor, control means for selectively actuating the lifting means, an open-topped

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housing accommodating the pallet support means and lifting means mounted therein.

The differences being that Mehlinger does not disclose the housing comprising a plurality of upstanding housing walls each having an inner and outer surface, display means is a display panel associated with the housing for placing a promotional message, said display panel of either rectangular or square mounted on said outer surfaces of said housing walls by various means, the promotional message is embodied in either a printed medium or a poster having holographic image imprinted thereon, a frame for mounting of the display panel having various structures, a closure member for the housing walls of either a latch, a hook-and-eye, the housing having various polygonal shapes, the lifting means being a scissors lift.

Skolasinski teaches the idea of providing a merchandising apparatus comprising a housing having a plurality of upstanding walls having lifting means operatively connected to a pallet support means for moving the pallet support means between a lowered position and a raised position, such as shown in Fig 6-9, for ease of assembly to receive and permit aesthetic display of various merchandise. Champion teaches the idea of providing a retail merchandising apparatus comprising a housing having a plurality of upstanding walls, display means comprising a plurality of display panels mounted on the outer surfaces of said upstanding housing walls, a closure member of hook-and-loop; wherein the structure comprises advertising indicia for advertising purpose. In view of the teachings of Skolasinski and Champion, it would have been obvious to modify the structure of Mehlinger by providing the merchandising apparatus with a plurality of upstanding housing walls each having an inner and outer surface for

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ease of assembly to receive and permit aesthetic display of various merchandise, as taught by Skolasinski, and display means is a display panel associated with the housing for placing a promotional message, said display panel of either rectangular or square mounted on said outer surfaces of said housing walls by various means for advertising purpose, as taught by Champion, since the references teach alternate conventional merchandise apparatus structure, thereby providing structure as claimed. In regard to the promotional message being various medium and mounted to the housing walls by various mounting means, the examiner takes the position that it is well known in the art that promotional message can be of various medium and being mounted by various mounting means. In regard to the lifting being a scissors lift, the examiner takes the position that it is well known in the art to use a scissors lift including hydraulic or pneumatic, or mechanical drive means. In regard to claims 88-90, it would have been obvious that Mehlinger, as modified, can be used at various locations.

17. Claims 55-59, and 95-101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mehlinger, as modified, as applied to claims 1 and 92 above, and further in view of USP 6,769,368 to Underbrink et al.

Mehlinger, as modified, discloses all the elements as discussed above except for ramp means associated with the pallet support means having a ramp member disposed in sliding relation with the shelf, a slot defined between the shelf and the lifting means for locating the ramp member in the stowage position, a beveled lip attached to and projecting from an edge of the shelf to thereby permit a pallet truck carrying a loaded to be rolled onto the shelf and the floor.

Underbrink teaches the idea of providing a pallet comprising a ramp means associated with a pallet support means having a ramp member disposed in sliding relation with a shelf, a slot defined between the shelf and the support means for locating the ramp member in the stowage position, a beveled lip attached to and projecting from an edge of the shelf to thereby permit a pallet truck carrying a loaded to be rolled onto the shelf and the floor for the purpose of facilitate loading of merchandise onto the pallet. In view of the teachings of Underbrink, it would have been obvious to modify the structure of Mehlinger, as modified, by providing ramp means associated with the pallet support means having a ramp member disposed in sliding relation with the shelf, a slot defined between the shelf and the lifting means for locating the ramp member in the stowage position, a beveled lip attached to and projecting from an edge of the shelf to thereby permit a pallet truck carrying a loaded to be rolled onto the shelf and the floor for the purpose of facilitate loading of merchandise onto the pallet, as taught by Underbrink, since both teach alternate conventional pallet structure, used for the same intended purpose supporting merchandise thereon, thereby providing structure as claimed.

18. Claims 79-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mehlinger, as modified, as applied to claim 1 above, and further in view of USP 4,741,414 to Claassen.

Mehlinger, as modified, discloses all the elements as discussed above except for the shelf has four sides, the pallet support means including raised skirt member

extending peripherally about each outermost edge of three contiguous sides of the shelf, the outermost edge of the remaining side being free of obstruction.

Claassen teaches the idea of providing a pallet with a pallet support means, a lifting means, a shelf; wherein the shelf has four sides, the pallet support means including raised skirt member extending peripherally about each outermost edge of three contiguous sides of the shelf, the outermost edge of the remaining side being free of obstruction in order to facilitate placement of a loaded pallet onto the shelf. In view of the teachings of Claassen, it would have been obvious to modify the structure of Mehlinger, as modified, by providing the shelf with four sides, the pallet support means including raised skirt member extending peripherally about each outermost edge of three contiguous sides of the shelf, the outermost edge of the remaining side being free of obstruction in order to facilitate placement of a loaded pallet onto the shelf, as taught by Claassen, since both teach alternate conventional pallet supporting structure, thereby providing structure as claimed.

19. Claims 81-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mehlinger, as modified, as applied to claim 1 above, and further in view of USP 4,741,414 to Claassen.

Mehlinger, as modified, discloses all the elements as discussed above except for the shelf has four sides, the pallet support means including raised skirt member extending peripherally about each outermost edge of three contiguous sides of the shelf, the outermost edge of the remaining side being free of obstruction.

Claassen teaches the idea of providing a pallet with a pallet support means, a lifting means, a shelf; wherein the shelf has four sides, the pallet support means including raised skirt member extending peripherally about each outermost edge of three contiguous sides of the shelf, the outermost edge of the remaining side being free of obstruction in order to facilitate placement of a loaded pallet onto the shelf. In view of the teachings of Claassen, it would have been obvious to modify the structure of Mehlinger, as modified, by providing the shelf with four sides, the pallet support means including raised skirt member extending peripherally about each outermost edge of three contiguous sides of the shelf, the outermost edge of the remaining side being free of obstruction in order to facilitate placement of a loaded pallet onto the shelf, as taught by Claassen, since both teach alternate conventional pallet supporting structure, thereby providing structure as claimed.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Karpisek, Flanagan et al, Neal et al, Fraser, O'Neill et al, Clayton et al, and Ito all show structures similar to various elements of applicant's disclosure.

21. Applicant's remarks regarding the correct contact telephone number and address is noted with appreciation.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HVT

October 30, 2006



Hanh V. Tran

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